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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,572	08/14/2001	James W. Biondi	CPC-003CPCN2	4149

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EXAMINER

MITCHELL, TEENA KAY

ART UNIT PAPER NUMBER

3761

DATE MAILED: 03/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,572

Applicant(s)

BIONDI ET AL.

Examiner

Teena K Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

- processor 22 (Fig. 5),
- display 24 (Fig. 5),
- right side 77 (however there are two numerals 76),
- current position 110,
- display controller (Fig. 12). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

- Page 6, lines 25 and 26, "...airway 21..." then on page 7, line 19, "...flexible tubing 21...", line 24, "...flexible airway tubing...", line 28, "...airway tubing 21..." there should be consistency throughout the specification with respect to reference numeral 21 and what it is labeled.
- Page 10, line 29, "...medical ventilator 7..." should be amended to read -- medical ventilator 17--.
- Page 11, line 15, "...14and..." should be amended to read --14 and--.
- Page 13, line 14, "...200msec..." should be amended to read --200 msec--.

- Page 15, several lines, the minute volume wheel in the figure is actually labeled as 82' rather than 82.
- Page 18, line 3, "...scroll bar title 108..." then in lines 4 and 5, "...full vertical range 108...".

Correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-26, 29, 31-33, and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "...said ventilator pneumatic system..." in line 4.

There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "...the patient's pulmonary system..." in line 3.

There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "...the set of breath parameters..." in lines 3 and 4.

There is insufficient antecedent basis for this limitation in the claim.

Claim 15 recites the limitation "...the status..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "...said ventilator pneumatic system..." in line 4.

There is insufficient antecedent basis for this limitation in the claim.

Claim 18 recites the limitation "...the set of breath parameters..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "...the ventilator pneumatic system..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "...the patient's pulmonary system..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "...the set of breath parameters..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 21 recites the limitation "...the status of a patient's pulmonary system..." in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 21 recites the limitation "...the patient's pulmonary system..." in lines 10 and 13. There is insufficient antecedent basis for this limitation in the claim.

Claim 21 recites the limitation "...the set of breath parameters..." in lines 13 and 14. There is insufficient antecedent basis for this limitation in the claim.

Claim 23 recites the limitation "...the user interface..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 24 recites the limitation "...the status of the patient's pulmonary system..." in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 24 recites the limitation "...the patient's pulmonary system..." in line 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 24 recites the limitation "...the predicted status of the patient's pulmonary system..." in lines 9 and 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 25 recites the limitation "...the set of breath parameters..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 29 recites the limitation "...the patient's pulmonary status..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 31 recites the limitation "...the selected patient protocol..." in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 32 recites the limitation "...the gas flow resistance..." in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 32 recites the limitation "...the measured gas flow resistance..." in line 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 33 recites the limitation "...the input values..." in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claim 38 recites the limitation "...the gas flow resistance..." in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 38 recites the limitation "...the measured resistance..." in line 13. There is insufficient antecedent basis for this limitation in the claim.

Double Patenting

Claims 11-38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19, 21, 28, 31, 35, and 39 of

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U.S. Patent No. 5,931,160. Although the conflicting claims are not identical, they are not patentably distinct from each other because the mere omission of an element and its function (e.g. **claim 11** of the instant application: display, processor for creating, from a set, user interface, a memory electrically coupled to the user interface for storing the set of breath parameters; **claim 16** of the instant application: from a display controller, within a set of breath parameters to control respiration of a patient, using an embedded controller to simultaneously adjust, in response to the set if breath parameters received from the display controller; **claim 21** of the instant application: a display, a user interface, to define one or more breath parameters within a set, an embedded controller and a display controller comprising a user interface for receiving the set of breath parameters; **claim 24** of the instant application: display, user interface, electronically connected to an embedded controller; **claim 27** of the instant application: providing to a processor, setting a display controller via a user interface control settings and alarm settings, using an embedded controller comprising a real-time processor; **claim 28** of the instant application: an embedded controller comprising a real time processor , providing user selected input values, repeating steps; **claim 30** of the instant application: using an embedded controller comprising a real-time processor; **claim 31** of the instant application: an embedded controller comprising a real-time processor electrically coupled to the user interface; **claim 32** of the instant application: display controller, an embedded controller comprising a real-time processor; **claim 33** of the instant application: of one minute, an embedded controller; **claim 38** of the instant application: display controller, an embedded controller comprising a real-time

processor) is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ (CCPA 1963). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969).

Claim Rejections - 35 USC § 102

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 11, 16, and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Melker et.al (6,000,396).

Melker in a ventilator discloses a controller (222) comprising a breath control structure, said controller receiving input values from a user for setting one or more breath parameters (36) within said breath control structure and for adjusting a plurality of controls within said ventilator pneumatic system (292) in response to the breath control structure (Columns 15-19).

Claims 16, and 31 are equivalent in scope to claim 11 discussed above and are included in Melker.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show ventilator control systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena K Mitchell whose telephone number is (703) 308-

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4016. The examiner can normally be reached on Monday-Thursday 5:30 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

TKM

TKM
March 9, 2002

